UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MUTINTA MICHELO, et al,

Plaintiffs,

v. 18 CV 1781 (PGG)

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2007-2, et al.,

Conference

Defendants.

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New York, N.Y.
June 21, 2018
10:35 a.m.

Before:

HON. PAUL G. GARDEPHE

District Judge

APPEARANCES

FRANK LLP
Attorneys for Plaintiffs
BY: GREGORY A. FRANK
ASHER HAWKINS

LOCKE LORD LLP
Attorneys for National Collegiate Defendants
BY: GREGORY T. CASAMENTO

SESSIONS FISHMAN NATHAN & ISRAEL LLC
Attorneys for Defendant Transworld
BY: AARON R. EASLEY

RIVKIN RADLER LLP
Attorneys for Defendant Forster & Garbus LLP
BY: CAROL A. LASTORINO

(Case called)

THE COURT: The plaintiffs in this case individually and on behalf of others that are similarly situated have brought claims against National Collegiate Student Loan Trust 2007-2, National Collegiate Student Loan Trust 2007-3 -- I will refer to these entities as "the trust defendants" -- also Transworld Systems, Inc., EGS Financial Care, and a law firm Forster & Garbus, alleging violations of the Fair Debt Collection Practices Act, New York General Business Law § 349, and New York Judiciary Law § 487. Cplt. Dkt. No. 8, ¶¶ 9, 29, 119-138.

The essence of plaintiffs' claims is that the defendants have engaged in a fraudulent scheme to make false representations to consumers and to courts in order to obtain payment on debts that they cannot prove that they are owed. Cplt. ¶ 1.

Plaintiffs allege that an entity called NCO Financial, which was a predecessor to Transworld, together with Transworld, that those entities act as servicing agents for the trust defendants and coordinate with certain debt collection law firms around the country, including Forster & Garbus, to file baseless lawsuits against consumers over purported debts. Cplt. ¶¶ 2-6 and 40-43.

Plaintiffs allege that defendants employ a variety of illegal tactics in these actions, including the submission of

false affidavits, all in an effort to fraudulently obtain default judgments against consumers with respect to these allegedly unprovable debts. Cplt. ¶¶ 11-13.

The defendants deny liability, and they have filed a pre-motion letter with respect to a motion to dismiss that they would like to bring. Defendants contend that plaintiffs' claims under the Fair Debt Collection Practices Act are time-barred. They further contend that plaintiffs' New York General Business Law § 349 claims fail because they fail to state a claim and are time-barred. Finally, Forster & Garbus claims that the claim that is brought under New York Judiciary Law § 487 fails to state a claim.

I have a pre-motion conference requirement because I like to know ahead of time what motions lawyers are thinking about bringing so that I have an opportunity to give you my impressions before you actually file the motion. I want to emphasize at the outset what I am about to say to you are merely my impressions based on what I have read so far.

I have found it useful over the years to give my initial impressions to lawyers about the merits of the proposed motion so that they can take those thoughts into account in deciding whether to actually file the motion and, if so, making sure that the motion addresses the concerns that I have raised in conferences such as this.

Let me begin with some background. I understand that

the trust defendants are securitized trusts that were designed to hold student loans. Cplt. ¶¶ 24, 25, 39. Large lenders or originators made these loans to borrowers and then sold them to National Collegiate Funding LLC, which is a subsidiary of First Marblehead Corporation. Cplt. ¶ 39. First Marblehead created the trust defendants, and National Collegiate Funding LLC later sold the loans to the trust defendants. Id. Each trust defendant then issued asset-backed securities. Id.

I further understand that NCO Financial and Transworld act as servicing agents for the trust defendants by engaging in debt collection activities on behalf of the trust defendants once they determine that a debtor has defaulted. Cplt. ¶¶ 40-45. I further understand Transworld to be a successor to NCO Financial. The complaint further alleges that NCO Financial does business as EGS Financial. Cplt. ¶¶ 26 and 27.

The complaint alleges that Transworld, and NCO Financial before it, coordinate debt collection activities with law firms, such as defendant Forster & Garbus. Cplt. ¶ 45. According to the complaint, Forster & Garbus has filed "hundreds, if not thousands, of state court lawsuits against New Yorkers allegedly indebted to [the National Collegiate Trust]." Cplt. ¶¶ 52-58.

According to plaintiffs, the law firm's court filings are "mass-produced by nonlawyers" without reasonable investigation to confirm the "validity of the allegations and

claims lodged" against consumers, including plaintiffs. Cplt. ¶ 53.

The plaintiffs allege that Forster & Garbus did not process or review any documentary support for the claims it brought against plaintiffs even though the complaints filed by the law firm contain a certification that the attorney signing the complaint engaged in a meaningful review of the claims asserted in these complaints. Cplt. ¶¶ 54, 57-59, 91.

According to plaintiffs, Forster & Garbus produced complaints that contained numerous false statements and filed applications for default judgments with misleading affidavits that the firm knew were not based upon personal knowledge. Cplt. ¶¶ 81-90, 94-102.

Pursuant to this alleged scheme, Forster & Garbus brought a lawsuit against plaintiff Michelo on or about July 14, 2015, seeking $22,047.88. Cplt. ¶ 61, 75. On or about May 29, 2014, Forster & Garbus brought a lawsuit against the two Seamen plaintiffs seeking $24,324.29. Cplt. ¶ 78, 91.

According to plaintiffs, the complaints in these two actions contain multiple false statements. For example, the complaints stated that the trust defendants were the "original creditors" even though the trust defendants did not originate the agreement underlying the alleged debt sued on. Cplt. ¶¶ 64-66, 82-83.

The complaints in these actions also stated that the

trust defendants were "authorized to proceed with this action" even though, according to plaintiffs, trust defendant 2007-3 had not filed a certificate of designation with the New York State Department of State and accordingly was not permitted to maintain a lawsuit in New York. Cplt. ¶¶ 68, 72, 85-90.

According to plaintiffs, the complaints filed by the law firm also contained false certifications attesting that the signing attorney engaged in a meaningful review of the claims alleged when in fact no such meaningful review had occurred. Cplt. ¶¶ 73, 74, 91, 92.

According to plaintiffs, in connection with the litigation brought against the Seamen plaintiffs, Forster & Garbus filed an affidavit that was not based on personal knowledge in order to procure a default judgment. Cplt. ¶¶ 95-96.

The complaint goes on to allege that on July 17, 2017, The New York Times published an article regarding National Collegiate. According to plaintiffs, The New York Times reported that an audit of Transworld had revealed, based on a random sample of about 400 National Collegiate loans, that there was no paperwork evidencing chain of ownership. Cplt. ¶¶ 110-112.

The complaint goes on to allege that on September 18, 2017, the Consumer Financial Protection Board, or the CFPB, announced certain findings with respect to National Collegiate

and Transworld and in particular found that those entities had filed lawsuits without the intention or ability to prove the claims; second, that they had filed lawsuits over a debt that was time-barred; and also that they had filed false and misleading affidavits in support of lawsuits against consumers. Cplt. ¶¶ 4, 113-114, 140. The CFPB imposed a penalty of $21.6 million.

The action before me was filed on February 28, 2018, and contains three causes of action. First, the complaint alleges violation of the Fair Debt Collection Practices Act against Transworld, NCO Financial, EGS Financial, and the law firm Forster & Garbus. Second, the complaint alleges violations of General Business Law § 349 against all defendants. Finally, the complaint alleges violations of New York Judiciary Law § 487 as against the law firm Forster & Garbus. Cplt. ¶¶ 119-138.

As I noted at the outset in their pre-motion letter, defendants contend that plaintiffs' Fair Debt Collection Practices Act claims are time-barred, that the § 349 claims fail to state a claim and are time-barred, and that the judiciary law claim fails to state a claim. Def. Ltr. Dkt. No. 37.

I am going to give you now my impressions of the proposed motion to dismiss based on what I have read to date.

Beginning with the issue of whether plaintiffs' Fair

Debt Collection Practices Act claims are time-barred, defendants argue that these claims are time-barred under a one-year statute of limitations that is set forth in Title 15, United States Code § 1692k(d). Def. Ltr. Dkt. No. 37 page 2.

Defendants point out that the complaint was filed on February 28, 2018, and that plaintiffs' claims are predicated on conduct that occurred in 2015 and 2016. In response, plaintiffs contend that the statute of limitations was tolled because defendants' fraud was "inherently self-concealing." Pltf. Ltr. Dkt. No. 38, page 3.

Defendants respond that the plaintiffs cannot demonstrate the applicability of equitable tolling because "any alleged FDCPA violation would have been present on the face of the state court collection complaints which the most minimal amount of diligence by plaintiffs would have revealed." Def. Ltr. Dkt. No. 37, pages 2-3.

Moreover, according to defendants, plaintiffs have not been diligent because they have "been credit reported or had a wage garnishment executed upon them since 2015" yet have "done nothing to investigate grounds to challenge that collection activity for more than one year." Id. at page 3.

The FDCPA provides that "an action to enforce any liability created for this subchapter may be brought in any appropriate United States district court within one year from the date on which the violation occurs." 15 United States Code

§ 1692k(d).

The statute of limitations may, however, be "equitably tolled" where plaintiff establishes:

(1) the defendant concealed from him the existence of his cause of action;

(2) he remained in ignorance of that cause of action until some length of time within the statutory period before commencement of his action; and

(3) his continuing ignorance was not attributable to lack of diligence on his part.

Sykes v. Mel Harris & Associates, 757 F.Supp.2d 413, 422 (S.D.N.Y. 2010). "A defendant may be deemed to have concealed the existence of the cause of action when the conduct forming the basis of the action is inherently self-concealing." Toohey v. Portfolio Recovery Associates, 2016 WL 4473016, at *6, (S.D.N.Y. August 22, 2016).

Plaintiffs allege that on May 29, 2014, Forster & Garbus filed the lawsuit I mentioned earlier against the Seamen plaintiffs seeking $24,324.29. Cplt. ¶¶ 78-93. Plaintiffs further allege that on or about March 30, 2015, Forster & Garbus filed an application for default judgment in that action. Cplt. ¶ 94.

In connection with this application, Forster & Garbus submitted an affidavit from James Cummins, a Transworld employee, in which Cummins represented that he had reviewed

Transworld business records and the underlying loan documentation and that based on this information Cummins had personal knowledge that the Seamen plaintiffs owed the $24,324.29. Cplt. ¶¶ 94-101.

The Seamen plaintiffs contend that these representations were false and that Mr. Cummins in fact had no personal knowledge of the business records or the underlying documentation establishing that the Seamen plaintiffs owned the debt in question. Cplt. ¶¶ 96-99.

Because of the false and misleading statements contained in these affidavits, the Seamen plaintiffs contend that they remained unaware of defendants' fraud until the CFPB published its findings on September 18, 2017, thus revealing that Transworld had a practice of filing false and misleading affidavits in support of lawsuits against consumers. Cplt. ¶¶ 114, 142-144.

My impression based on what I have read so far is that these allegations are sufficient to plausibly demonstrate the applicability of equitable tolling as to the Seamen plaintiffs. See Toohey, 2016 WL 4473016, at *6.

As an initial matter, an affidavit that falsely represents that the affiant personally reviewed underlying documentation is "inherently self- concealing" because the "alleged falsity is information of which only the defendant could be aware." Id. See also State of New York v.

Hendrickson Brothers, 840 F.2d 1065, 1083 (2d Cir. 1988) ("The passing off of a sham article as one that is genuine is an inherently self-concealing fraud.")

Moreover, a plaintiff supplied with a false affidavit may plausibly remain in ignorance of his or her claim unless the falsity of the representations made in the affidavit is revealed. See Toohey, 2016 WL 4473016, at *6 (Plaintiff "plausibly alleges that she remained in ignorance of the basis of her cause of action until the CFPB issued it September 8, 2015, consent order revealing that routine representations made by portfolio recovery associates employees in nearly identical affidavits were false").

Finally, the Seamen plaintiffs' continuing ignorance is "not attributable to a lack of diligence on their part" because the affidavit "was inherently self-concealing" and the Seamen plaintiffs "had no reason to question the truthfulness of the affidavit and therefore no reason to doubt that defendants lawfully carried their burden of proof to obtain the lawful judgment." Id. at *7.

Accordingly, it appears to me, based on what I have read so far, that the Seamen plaintiffs have plausibly alleged that they remained ignorant of their FDCPA claims until the CFPB published its findings on September 18, 2017. Because the Seamen plaintiffs brought this suit within a year of the CFPB's findings being announced, it appears to me that their claims

are timely. For these reasons it appears to me that defendants' motion to dismiss the Seamen plaintiffs' FDCPA claims would likely fail.

As to plaintiff Michelo, there are no allegations that Forster & Garbus ever filed any false and misleading affidavits in the action against Michelo. To the contrary, plaintiffs allege that the Forster & Garbus firm filed a lawsuit against Michelo on July 14, 2015, and then on December 9, 2016, defendants filed a notice of voluntary discontinuance. Cplt. ¶¶ 61, 75-76. No application for default judgment appears to have been filed, nor does it appear that supporting affidavits were filed. See Id. ¶¶ 61-76.

Absent additional facts that plausibly allege an alternative basis for equitable tolling of Michelo's claims, the one-year statute of limitations would appear to apply. Because all the relevant conduct upon which Michelo's claim is based occurred in 2015 and 2016, absent these additional factual allegations, it would appear to me that plaintiff Michelo's claim is time-barred. Accordingly, with respect to Michelo, it appears to me that defendants' motion to dismiss Michelo's FDCPA claim may be well-founded.

As to the § 349 claim, as I noted, defendants request leave to move to dismiss that claim on the grounds that plaintiffs have not stated a claim and that their claim under § 349 is time-barred under the 3-year statute of limitations.

Def. Ltr. Dkt. No. 37 at pages 3-4.

To state a claim under New York General Business Law § 349, a plaintiff "must prove three elements: first, that the challenged act or practice was consumer oriented; second, that it was misleading in a material way; and third, that the plaintiff suffered injury as a result of the deceptive act." Crawford v. Franklin Credit Management, 758 F.3d 473, 490 (2d Cir. 2014).

For an act to be "consumer-oriented" a plaintiff "must show it had a broader impact on consumers at large." "Private contract disputes unique to the parties, for example, would not fall within the ambit of the statute." Id.

Defendants argue that the plaintiffs have not sufficiently alleged consumer-oriented conduct because plaintiffs' claims turn on "two distinct disputes relating to the litigation surrounding two private contractual disputes." Def. Ltr. Dkt. No. 37 page 3.

"Claims arising under § 349 need not allege a repetition or pattern of deceptive behavior, however, so long as the conduct alleged potentially affects similarly situated consumers." Winslow v. Forster & Garbus LLP, 2017 WL 6375744, at *13 (E.D.N.Y. Dec. 13, 2017).

Moreover, while a plaintiff's private contract dispute does not fall within § 349 (Oswego, 85 N.Y.2d at 25) where "the crux of the claim is that these practices were a normal part of

defendant's business, which involved hundreds of thousands of dollars in consumer debt," "the allegedly deceptive conduct had a broad impact on consumers." Fritz v. Resurgent Capital Services, 955 F.Supp.2d 163, 173-74 (E.D.N.Y. 2013); also Winslow, 2017 WL 6375744, at *13 ("There is no doubt that defendants allegedly deceptive conduct involves a much larger amount of consumer debt than Winslow's debt alone and has a broad impact on consumers at large").

Here, plaintiffs have alleged widespread deceptive business practices that have had an impact allegedly on a broad swath of consumers. Cplt. Dkt. No. 8 ¶¶ 1-16. Accordingly, it appears to me that plaintiffs have plausibly alleged consumer-oriented conduct.

As to whether plaintiffs have alleged sufficient facts to establish the second element, that the challenged practice was materially misleading, plaintiffs allege that the complaints filed by Forster & Garbus in the actions against Michelo and the Seamen plaintiffs falsely state that the trust defendants were the "original creditors" even though the trust defendants did not originate the agreement underlying the alleged debt sued upon. Cplt. at ¶¶ 64-66, 82-83.

A "statement as to the trusts original creditor status is not only material within the least sophisticated consumer standard at the FDCPA but also materially misleading under § 349." Winslow 2017 WL 6375744, at *13. Indeed, this type of

statement "might lead a debtor to be confused as to the nature of the debt sought to be collected and is therefore misleading within the meaning of § 349." Id.

Moreover, defendants' contention that Michelo and the Seamen plaintiffs did not rely on and were not misled by these statements (see Def. Ltr. Dkt. No. 37 at pages 3-4) is irrelevant because the New York Court of Appeals "has repeatedly stated that reliance is not an element of a § 349 claim." Stutman v. Chemical Bank, 95 N.Y.2d 24-28 (2000). Thus, it appears to me that plaintiffs' allegations are sufficient to establish that the challenged practice was materially misleading.

With respect to the third element of the § 349 claim, that plaintiffs suffered an injury as a result of the deceptive act, defendants argue that plaintiffs have not alleged sufficient injury. Def. Ltr. Dkt. No. 37 at page 4. Claims brought under § 349, however, "do not require a showing of pecuniary harm, and the argument that plaintiff was subject to unnecessary litigation is sufficient to support her claim of damages." See Winslow 2017 WL 6375744, at *13.

Moreover, plaintiff Michelo alleges that she suffered injury because defendants "falsely reported to credit bureaus that the underlying alleged debt was valid and owed," and plaintiff Mary Seamen alleges that she suffered injury because her wages were garnished as a result of the fraudulent default

judgment procured by Forster & Garbus. Cplt. Dkt. No. 8 ¶¶ 77-107. These allegations appear to me to be sufficient to satisfy the third element.

In sum, my impression based on what I have read so far is that plaintiffs' allegations are sufficient to state a claim under New York General Business Law § 349.

With respect to the argument that the § 349 claim is time-barred, claims brought under the statute are subject to a 3-year statute of limitations. Anthes v. New York University, 2018 WL 1737540, at *7 (S.D.N.Y. March 12, 2018). "A § 349 claim accrues when plaintiff has been injured by a deceptive act or practice violating § 349." Id.

Equitable tolling is also available for claims arising under General Business Law § 349. Martin Hilte Family Trust v. Knoedler Gallery LLC, 137 F.Supp.3d 430, 467 (S.D.N.Y. 2015) ("For equitable tolling to apply, plaintiff must show that the defendant wrongfully concealed its actions such that plaintiff was unable, despite due diligence, to discover facts that would allow him to bring his claim in a timely manner or that defendants' actions induced plaintiff to refrain from commencing a timely action.")

For the same reasons I have already discussed, it appears to me that the Seamen plaintiffs have plausibly alleged equitable tolling with respect to their New York General Business Law § 349 claim. See, e.g., Hunter v. Palisades

Acquisition, 2017 WL 5513636, at *8 n. 11 (S.D.Y.N. Nov. 16, 2017).

Moreover, even though, based on what I have read, it appears to me that plaintiff Michelo has not alleged sufficient facts to establish equitable tolling, her § 349 claims would be timely under that statute's 3-year limitations period. Plaintiff Michelo alleges that Forster & Garbus initiated a lawsuit against her on July 14, 2015. Cplt. ¶ 61. Assuming that her injury occurred on the day that Forster & Garbus filed the allegedly frivolous lawsuit against her, plaintiff Michelo would have been required to file suit by July 14, 2018. In this action the complaint was filed on February 28, 2018. Accordingly, it appears to me that plaintiff Michelo's § 349 claims are timely.

In sum, based on what I have read to date, it appears to me that a motion to dismiss the § 349 claims on statute of limitations grounds would likely fail.

Finally, as to the New York Judiciary Law § 487 claim, Forster & Garbus argues that plaintiffs have not stated a claim under that statute. Def. Ltr. Dkt. No. 37 at pages 4-5. Section 487 of the New York Judiciary Law provides, "an attorney or counsel who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or any party is guilty of a misdemeanor and in addition to the punishment prescribed therefor by the penal law, he

forfeits to the party treble damages to be recovered in a civil action." New York Judiciary Law § 487.

Section 487 is "strictly construed." Kaye Scholer LLP v. CNA Holdings, 2010 WL 1779917, at *2 (S.D.N.Y. April 28, 2018), with "liability attaching only if the deceit is extreme or egregious." Ray v. Watnick, 182 F.Supp.3d 23, 29 (S.D.N.Y. 2016).

This limitation to "intentional, egregious misconduct" is intended to "afford attorneys wide latitude in the course of litigation to engage in written and oral expression consistent with responsible, vigorous advocacy." O'Callaghan v. Sifre, 537 F.Supp.2d 594, 596 (S.D.N.Y. 2008).

Accordingly, in order to state a claim under judiciary law § 487, "a plaintiff has to show that defendants (1) are guilty of deceit or collusion or consent to any deceit or collusion;" "(2) had an intent to deceive the court or any party;" and (3) "that damages were caused by the deceit." Iannazzo v. Day Pitney LLP, 2007 WL 2020052, at *11 (S.D.N.Y. July 10, 2007).

This standard "excludes from liability statements to a court that fall well within the bounds of the adversarial proceeding." O'Callaghan, 537 F.Supp.2d at 596. As such, "an action grounded essentially on claims that an attorney made meritless or unfounded allegations in state court proceedings would not be sufficient to make out a violation of § 487." Id.

"A single act or decision, however, if sufficiently egregious and accompanied by an intent to deceive is sufficient to support liability." Id.

Here plaintiffs allege that Forster & Garbus conspired with their clients to deceive consumers and fraudulently procure default judgments by filing false and misleading complaints and affidavits. Cplt. Dkt. No. 8 ¶¶ 135-138. Plaintiffs' allegations are not merely that Forster & Garbus filed claims that ultimately turned out to be unfounded or meritless, but rather that they knowingly filed complaints containing false representations and attorney certifications as well as fraudulent affidavits. See Id.

Accepting the factual allegations in the complaint as true and drawing all inferences in the light most favorable to plaintiffs, it appears to me that plaintiffs have likely stated a claim against Forster & Garbus under § 487. See Sykes v. Mel Harris & Associates, 757 F.Supp.2d 413, 428-29 (S.D.N.Y. 2010) ("Plaintiffs' allegations regarding the fraudulent affidavits and other filings provide adequate support for this claim against the defendants");

Also, Scott v. Greenberg, 2017 WL 1214441, at *15 (E.D.N.Y. Mar. 31, 2017) ("The court finds that the conduct as alleged is intentional and egregious. The gravamen of plaintiff's judicial law § 487 claim is that defendant orchestrated a scheme to obtain a default judgment by telling

plaintiff that she did not need to appear in the action provided she continued to make payments and then continued the court proceeding despite plaintiff's payments and obtained a default judgment. Accepting plaintiff's allegations as true, they plausibly state that Greenberg intentionally deceived plaintiff and the court.")

In sum, it appears to me that the proposed motion to dismiss plaintiffs' § 487 claim would likely be denied.

I would ask counsel to consider what I have said about the various claims. If plaintiffs wish to amend the complaint in response to what I have said this morning, they will do so by June 28th. Defense counsel will let me know by July 2nd whether defendants wish to proceed with the motion to dismiss, and if so, they will explain why the concerns I have raised this morning about such a motion are not valid. If defendants wish to proceed with the motion to dismiss, they will propose a briefing schedule that they have discussed with plaintiffs' counsel.

With respect to entry of a case management plan, it is my intention to enter a case management plan because I believe that the claims here for the most part will survive a motion to dismiss. I do not intend to stay discovery in the interim.

The parties have sought a much longer period for discovery than I ordinarily would grant, so we will need to have a conversation about the length of the discovery that is

sought. I also want to hear from the parties about whether there is any opportunity to settle the case before it proceeds further.

Let me hear from plaintiffs' counsel first about whether there has been any effort to settle the case up to now.

MR. FRANK: Good morning, your Honor. The parties have not had any substantive settlement discussions at this time.

THE COURT: Are the plaintiffs interested in conducting those discussions before the matter proceeds further?

MR. FRANK: If the defendants believe that we could have productive conversations, then plaintiffs of course are open to settling as expeditiously the matter as possible.

THE COURT: What do you have to say about the discovery period that is sought, which I think is about six months for fact discovery? Why is that period of time necessary and appropriate here?

MR. FRANK: Plaintiffs recognize that this is an unusually long period of time. This is a complex action. Plaintiffs have several other similar actions with similar allegations against not related but defendants in the same business, so we have some sense as to its complexity. However, we do recognize that 180 days is very significant. Plaintiffs would be comfortable shortening the period initially to as much

as 120 days, and we could check back with the Court if the Court would prefer that period.

THE COURT: Let me hear from defense counsel first on whether there is any prospect of settlement before we embark on discovery and possible motion practice.

MR. CASAMENTO: Good morning, your Honor. Greg Casamento from Locke Lord on behalf of the trusts. We have not received from the plaintiffs any sort of settlement demands, so we don't have any idea of what they would be looking for. So it's hard to say. Obviously, all parties are generally open to settlement discussions. We would want some sort of indication from the plaintiffs as to what they are looking for.

THE COURT: What I would ask the parties to do is to speak with their clients and then consult with each other about whether there might be any opportunity to have fruitful settlement discussions before it is necessary to embark on lengthy and undoubtedly expensive discovery as well as possible motion practice. More than that I will not say. If at any point you would like the help of the assigned magistrate judge for purposes of conducting settlement discussions, let me know, and I will do a referral to her.

What do you say about the discovery period? What do defendants say about the six months of discovery that was initially requested?

MR. CASAMENTO: Your Honor, that was based on a

conversation that we had with the plaintiffs about what sort of discovery they would be looking for, what sort of depositions they would want. In a case of this size, it appeared to us that there was going to be significant deposition practice in addition to document production. There are multiple defendants who are going to have to produce these documents and there are probably, maybe, nonparties who also have to produce documents and appear for depositions. We think the schedule is appropriate.

Also, given the schedule the Court just set forth about the plaintiffs wishing to amend and then the defendants wishing to take the time to decide if they are going to file their motions or not, we think the schedule suits the interests of the parties.

THE COURT: Let me do this. I am going to enter a case management plan today. It will provide for an initial period of 120 days of fact discovery and 60 days of expert discovery. I have heard you on the expected magnitude of the discovery. If that period of time for fact discovery proves unreasonable, you will let me know, and undoubtedly I will extend it.

I will look for a letter from plaintiffs' counsel within a week's time telling me whether they wish to amend the complaint. I will look for a letter from defense counsel by July 2nd telling me whether they wish to proceed with a motion

to dismiss. I will enter a case management plan consistent with what we have talked about.

Anything else anyone wants to say?

MR. CASAMENTO: Your Honor, in the case management plan, we set up the briefing for class certification to trigger off of the end of discovery and then any subsequent dispositive motion practice to occur after that. We wanted to point that out to the Court and make sure that you are aware of it.

THE COURT: Anything anyone wants to say on the plaintiffs' side about the schedule? I gather you agreed to it.

MR. FRANK: No, your Honor, we don't have anything additional to add.

THE COURT: Anything else anyone wants to say? All right. Thank you all.

(Adjourned)